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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

11 MARY E. BARBOUR AS TRUSTEE FOR  
12 THE MARY E. BARBOUR FAMILY  
13 TRUST ONE, Derivatively On Behalf of  
BROCADE COMMUNICATIONS  
SYSTEMS, INC.,

Case No. C 08-02029 CRB

PLAINTIFF MARY E. BARBOUR'S  
CASE MANAGEMENT CONFERENCE  
STATEMENT

Date: June 12, 2008  
Time: 1:30 p.m.  
Dept.: 8

14 Plaintiff,  
15 vs.  
16 GREGORY L. REYES, DAVID L. HOUSE,  
17 MICHAEL KLAYKO, RICHARD  
18 DERANLEAU, KUMAR MALAVALLI  
19 ANTONIO CANOVA, MICHAEL J. BYRD,  
20 STEPHANIE JENSEN, NEIL DEMPSEY,  
21 SANJAY VASWANI, L. WILLIAM  
22 KRAUSE, ROBERT R. WALKER, GLENN  
23 C. JONES, MICHAEL J. ROSE, SETH D.  
24 NEIMAN, NICHOLAS G. MOORE,  
25 CHRISTOPHER B. PAISLEY, WILLIAM K.  
O'BRIEN, LARRY SONSINI, MARK  
LESLIE, TYLER WALL, RENATO A.  
DIPENTIMA, JOHN W. GERDELMAN,  
KPMG, LLP, WILSON SONSINI  
GOODRICH & ROSATI, P.C. AND DOES  
1-25, inclusive.

### Defendants.

and

BROCADE COMMUNICATIONS  
SYSTEMS, INC., a Delaware corporation,

Nominal Defendant.

1 Plaintiff Mary E. Barbour submits this Case Management Statement pursuant to Civil  
 2 Local Rule 16.10.<sup>1</sup>

3 **I. JURISDICTION AND SERVICE**

4 The basis for the Court's subject matter jurisdiction in this case is Article III of the United  
 5 States Constitution and 28 U.S.C. § 1331 because of claims arising under RICO, 18 U.S.C.  
 6 §§ 1962(c) and 1964. This Court also has supplemental jurisdiction under 28 U.S.C. § 1337(a)  
 7 over all other claims that are so related to claims in the action within such original jurisdiction  
 8 that they form part of the same case or controversy under Article III of the United States  
 9 Constitution.

10 With respect to service, all defendants have been served and the proofs of service have  
 11 been filed with the Court.

12 **II. FACTS AND PROCEDURAL BACKGROUND**

13 On April 15, 2008, Plaintiff Mary E. Barbour, as Trustee of the Mary E. Barbour Family  
 14 Trust One, filed the present derivative action. The *Barbour* complaint alleges federal and state  
 15 law claims pertaining to the illegal manipulation of stock options that occurred at Brocade  
 16 Communications Systems, Inc. By order dated May 27, 2008, the Court granted Plaintiff's  
 17 Administrative Motion to Consider Whether Cases Should Be Related Pursuant to L.R. 3-12(b),  
 18 in which the Court ordered the cases related but did not consolidate the *Barbour* action with the  
 19 related actions pending before this Court, including *In re Brocade Communications Systems, Inc.*  
 20 *Derivative Litigation*, No. C05-02233 CRB and *In re Brocade Communication Systems, Inc. Sec.*  
 21 *Litig.*, Case No. C-05-2042 CRB.

22 The *Barbour* complaint adds new claims for violations of and conspiracy to violate the  
 23 Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§1962(c) and 1964,  
 24 which have not been asserted in any other related litigation. It also adds several new claims for  
 25 declaratory relief (Counts XII through XIV) which have not been asserted in any other related  
 26 litigation. The declaratory relief claims seek a declaration that Brocade has no further duty to

27 <sup>1</sup> Due to the fact that most of the individual defendants have not yet made a general appearance, it  
 28 is not possible to submit a joint CMC Statement as required by the local rules.

1 advance legal fees and expenses to Reyes (Count XII) and Jensen (Count XIII) and further  
2 seeking a declaration that Reyes, Jensen, and certain other defendants have a duty to return to  
3 Brocade legal fees and expenses that have been advanced by Brocade to such defendants. The  
4 *Barbour* complaint also names the following defendants who are not defendants in any other  
5 related derivative action: John Gerdelman, Renato DiPentima, Tyler Wall, Wilson Sonsini  
6 Goodrich & Rosati, P.C., Michael Rose, and Glenn C. Jones.

7 **III. OTHER RELATED ACTIONS**

8 The status of the related actions is summarized by Brocade in the Joint Case Management  
9 Conference Statement filed in *In re Brocade Communications Systems, Inc. Derivative Litigation*,  
10 No. C05-02233 CRB, to which Plaintiff respectfully refers the Court to avoid duplication.

11 **IV. PRINCIPAL FACTUAL ISSUES**

12 The principal disputed factual issues in the case are whether Brocade has no further duty  
13 to advance fees and expenses to Reyes and Jensen; whether Reyes and Jensen have a duty to  
14 return to Brocade the legal fees and expenses they have been advanced; whether the defendants  
15 violated and/or conspired to violate RICO; whether the defendants breached their fiduciary duties  
16 as officers and directors of Brocade with respect to their alleged involvement in the stock options  
17 manipulation scheme; whether KPMG LLP committed auditor malpractice; and whether Wilson  
18 Sonsini Goodrich & Rosati, P.C. committed legal malpractice.

19 **V. PRINCIPAL LEGAL ISSUES**

20 As to the RICO claims, the principal legal issues will be whether each defendant  
21 committed one or more predicate acts in furtherance of the alleged conspiracy and whether each  
22 defendant conspired to violate RICO. To demonstrate a pattern of racketeering activity, a  
23 plaintiff must show at least two predicate acts of racketeering activity occurring within a ten-year  
24 period. 18 U.S.C. § 1961(5); *Sell v. Zions First Nation Bank*, 2006 U.S. Dist. LEXIS 6558  
25 (D. Ariz.). With respect to Reyes and Jensen, there is no dispute that such defendants committed  
26 multiple predicate acts which constitute RICO violations since such defendants have been  
27 convicted of multiple criminal securities violations. When Congress passed the Private Securities  
28

1 Litigation Reform Act of 1995, it specifically held that criminal securities convictions constitute  
 2 predicate acts under RICO:

3 Any person injured in his business or property by reason of a  
 4 violation of section 1962 of this chapter [18 USC § 1962] may sue  
 5 therefor in any appropriate United States district court and shall  
 6 recover threefold the damages he sustains and the cost of the suit,  
 7 including a reasonable attorney's fee, except that no person may  
 8 rely upon any conduct that would have been actionable as fraud in  
 9 the purchase or sale of securities to establish a violation of section  
 10 1962 [18 USC § 1962]. *The exception contained in the preceding  
 11 sentence does not apply to an action against any person that is  
 12 criminally convicted in connection with the fraud, in which case  
 13 the statute of limitations shall start to run on the date on which  
 14 the conviction becomes final.*

15 RICO, 18 U.S.C. § 1964(c) (emphasis added). The other legal issues relevant to the RICO claims  
 16 are: (1) what level of particularity must be pled; (2) what must be pled to constitute a conspiracy  
 17 to violate RICO; and (3) what must be pled to establish an “associated-in-fact enterprise.” Last  
 18 year, the Ninth Circuit issued an *en banc* clarification of RICO standards. In *Odom v. Microsoft*,  
 19 486 F.3d 541 (9th Cir. 2007), the Court held that RICO claims are subject to F.R.C.P. 9(b) and  
 20 therefore must be pled with specificity, but that knowledge or state of mind may be averred  
 21 generally consistent with F.R.C.P. 8. *Odom*, 486 F.3d at 553-54. With respect to pleading an  
 22 “associated-in-fact enterprise,” the Ninth Circuit held that an associated-in-fact enterprise does  
 23 not require any ascertainable separate structure and that it is not a difficult task to allege an  
 24 associated-in-fact enterprise. *Odom*, 486 F.3d at 551-53. The Ninth Circuit also reiterated that  
 25 RICO is a remedial statute and is to be broadly interpreted and liberally construed. Moreover,  
 26 with respect to the “continuity” element, the Court stated that “the continuity requirement does  
 27 not, in itself, require that every member [of the conspiracy] ‘be involved in each of the underlying  
 28 acts of racketeering or that the predicate acts be interrelated in any way.’” *Odom*, 486 F.3d at  
 552-53 (quoting *United States v. Qaoud*, 777 F.2d 1105, 1116 (6th Cir. 1985)). Instead, the  
 continuity requirement is focused on whether the defendants’ behavior was an “ongoing” activity.  
 Moreover, it is well-established under the law of conspiracy that a conspirator who joins the  
 conspiracy late – even on the last day -- is jointly and severally liable for treble damages for the  
 entire period of the conspiracy. *United States v. Dicesare*, 765 F.2d 890, 900 (9th Cir. 1985). See

1 *also United States v. Saavedra*, 684 F.2d 1293, 1301 (9th Cir. 1982) ("[A] conspirator who joins a  
2 pre-existing conspiracy is bound by all that has gone on before in the conspiracy."). Finally, with  
3 respect to what is necessary to plead a claim for conspiracy to violate RICO, the Ninth Circuit  
4 held that a claim for conspiracy to violate RICO will be upheld in all cases where the plaintiff has  
5 sufficiently pled an underlying violation of RICO. *Odom*, 486 F.3d at 547.

6 With respect to Plaintiff's auditor malpractice claims against KPMG, LLP, Plaintiff  
7 believes that the legal standards applicable to such claims – negligence – are straightforward.  
8 With respect to KPMG's potential defenses, Plaintiff anticipates that KPMG may argue that the  
9 knowledge of Reyes and other senior executives of Brocade should be attributable to Brocade and  
10 thus preclude a claim by Brocade that it relied on KPMG's clean audits and KPMG's failure to  
11 disclose the stock option backdating activity. Plaintiff believes that such an argument, were it to  
12 be advanced by KPMG as a defense, has no merit. Indeed, a similar situation was presented in  
13 the context of a shareholder derivative accounting malpractice claim in *In re Cendant Corp. Sec.*  
14 *Litig.*, 139 F. Supp. 2d 585, 597-98 (D.N.J. 2001). There, with respect to the accounting  
15 malpractice claim against Ernst & Young, the evidence demonstrated that most of the senior  
16 executives of Cendant participated in the fraud. Notwithstanding the knowledge and participation  
17 of the company's senior executives, the court denied a motion to dismiss filed by Ernst & Young.  
18 The court held that, regardless of the knowledge and participation of the individual defendants, a  
19 claim for accounting malpractice was stated against Ernst & Young since the plaintiff had alleged  
20 that Ernst & Young was aware of or recklessly disregarded the fraud and nonetheless failed to  
21 comply with its duty as an independent auditor to discover and/or report the fraud. *In re Cendant*,  
22 139 F. Supp. 2d at 597-98. One of the key issues was whether the knowledge of the culpable  
23 senior executives should be attributable to the corporation. The court refused to attribute the  
24 executives' knowledge to the corporation since the executives, notwithstanding their statements  
25 that they believed they were acting in the best interests of the corporation, ultimately did not act  
26 in a manner that was in the company's best interests:

27 . . . although the individuals who allegedly committed the fraud  
28 painted a false financial picture of the company with the intent to  
benefit the company, these actions were ultimately against the best

interests of the company and should not be imputed to prevent Cendant from recovery against a separate, alleged wrongdoer, E&Y.

Here, despite Reyes' frequent protestations that he was merely seeking to benefit Brocade through his stock options backdating activity, those actions, which have cost Brocade hundreds of millions of dollars, were ultimately not in the best interests of Brocade. Thus, his conduct cannot be imputed to Brocade for the purpose of precluding a claim by Brocade against KPMG.

In *Cendant*, the court held that despite language in older cases to the effect that auditors do not have a duty to “ferret out” fraud, the passage of the PSLRA, the Sarbanes Oxley Act, and recent SEC accounting rules have heightened the duties of an auditor to public corporations. In denying Ernst & Young’s motion to dismiss, the *Cendant* court noted:

Cendant further reminds the Court that although Judge Posner concluded that auditors do not have a duty to "ferret out fraud," that concept has changed significantly since that case was decided in 1982. Specifically, the PSLRA imposes stricter duties on auditors to detect and report fraud, and new statements on auditing standards ("SASs") have been promulgated. See 15 U.S.C. § 78j-1(b)(3) (auditor has affirmative obligation to report fraud to SEC if the audited company does not); SAS 82 (auditor has duty to inform management of misstatements); AICPA Codification of Statements on Auditing Standards, AU 316.38 (2000). Finally, Cendant contends that it would be unfair to impute the fraud perpetrated by CUC managers to Cendant to avoid E&Y's liability for its own wrongdoing. Cendant Br., at 14. Cendant cites *Battenfeld v. Baird, Kurtz & Dobson*, in which a district court refused to impute such fraudulent actions to the surviving company of a merger. 60 F. Supp. 2d 1189, 1217-18 (D. Kan. 1999). *Battenfeld* held that the surviving corporation was a victim of the fraud of the original corporation because the actions of the individual who had painted a false financial picture were adverse to the interests of the company. *Id.* at 1218.

Especially given the recent changes in accounting standards and the increased duties of auditors to report misstatements both to the SEC and to management, Cenco's concern that a company guilty of fraud might be able to shift liability in its entirety does not apply. Even if Cendant were to prevail, it would only be able to shift the portion of the damages ultimately found to be attributable to E&Y, not the entire amount and thus would not be unfair as in a full Cenco scenario. As in *Battenfeld*, although the individuals who allegedly committed the fraud painted a false financial picture of the company with the intent to benefit the company, these actions were ultimately against the best interests of the company and should not be imputed to prevent Cendant from recovery against a separate, alleged wrongdoer, E&Y. This motion is denied.

1       1       *In re Cendant*, 139 F.Supp.2d at 597-98.

2                   With respect to Plaintiff's legal malpractice claims against Wilson Sonsini, Plaintiff does  
3       not anticipate any novel or unexpected legal issues. The legal standards applicable to such claims  
4       are well-established, and Plaintiff believes that Wilson Sonsini's legal advice with respect to  
5       stock options at Brocade for almost a decade, the presence of its founding partner on Brocade's  
6       board, and the firm's violation of Cal. R. Prof. Conduct 3-310 for more than two years, resulting  
7       in Wilson Sonsini's withdrawal from all the related cases in response to the motion to disqualify  
8       Wilson Sonsini filed in the state court action, provide ample evidence of the breach of  
9       professional responsibility.

10       **VI. MOTIONS**

11                   There are no pending motions. The key motions Plaintiff desires to file at the present time  
12       are the following: (1) a motion for summary adjudication as to Plaintiff's Twelfth Cause of  
13       Action against Reyes and Thirteenth Cause of Action against Jensen for declaratory relief relating  
14       to such defendants' obligation to return the legal fees advanced to them by Brocade, and for a  
15       declaration that Brocade has no further duty to advance fees and expenses to Reyes and Jensen;  
16       and (2) a motion to compel with respect to documents withheld by Brocade under claim of  
17       privilege.

18                   With respect to the motions Plaintiff is ready to file, and would like to file as soon as  
19       possible, regarding advancement of legal fees and indemnification, Plaintiff points out that the  
20       convictions of Reyes and Jensen are both now final, as Reyes perfected his appeal on January 18,  
21       2008 and Jensen perfected her appeal on March 26, 2008. Notwithstanding the appeals, the  
22       convictions now constitute final dispositions in the Ninth Circuit. *See Tripathi v. Henman*, 857  
23       F.2d 1366, 1367 (9th Cir. 1988); *Collins v. D.R. Horton, Inc.*, 2007 U.S. App. LEXIS 22613, at  
24       \*21 (9th Cir. Sept. 24, 2007). Thus, Brocade has no further duty to advance any legal fees or  
25       expenses to Reyes and Jensen, and Reyes and Jensen have an immediate duty to reimburse  
26       Brocade for the more than \$53 million that Brocade has advanced to them. Federal public policy  
27       prohibits indemnification for violations of the federal securities laws. *Laventhal v. Horwath*, 637  
28       F.2d 672, 676 (9th Cir. 1980). This federal policy, together with the final federal verdicts, pre-

1       empt and preclude Reyes and Jensen, who were unanimously convicted on all counts, from  
 2       seeking indemnification under any state law or under any contractual indemnification agreements  
 3       which are contrary to controlling federal precedent.<sup>2</sup>

4       Simply put, these defendants have an immediate obligation to return to Brocade the legal  
 5       fees and expenses that they have been advanced. Nonetheless, Brocade has done nothing to seek  
 6       the return of such fees and expenses from Reyes and Jensen. Indeed, far from seeking the return  
 7       of such fees and expenses, Brocade continues to advance fees and expenses to Reyes and Jensen.  
 8       Brocade's filings to this Court in connection with the sentencing of Reyes and Jensen stated that  
 9       Reyes and Jensen had collectively been advanced \$53,849,576 in legal fees and expenses as of  
 10      January 2008 (\$46,709,323 to Reyes and \$7,140,253 to Jensen). Ignoring the additional amounts  
 11      that Brocade has advanced to Reyes and Jensen since January 2008, and assuming Brocade could  
 12      earn 4.7% by investing the money Reyes and Jensen owe it in a 30-year U.S. Treasury bond,  
 13      Brocade has already lost \$1,054,554 by not taking prompt action in January 2008 to seek the  
 14      return of the \$53,849,576 in fees and expenses from Reyes and Jensen.<sup>3</sup>

15       Time is money. Plaintiff has included the requisite declaratory relief claims in her  
 16       complaint. No other complaint or proceeding other than the *Barbour* action contains a claim for  
 17       declaratory relief. While the SLC filed a letter with this Court on June 9, 2008 stating that it  
 18       wants to pursue many of the claims contained in the *Barbour* complaint (including the RICO  
 19       claims) against 11 different defendants, the SLC states that it will not be able to file a complaint  
 20       until "early August." Of course, after the complaint is filed, it will have to be served. Thus, the  
 21       SLC will be in no position to do anything about the pressing indemnification issue until  
 22       mid-September at the earliest. Brocade itself is without power to seek return of the fees since it  
 23       granted plenary and exclusive authority over the claims to the SLC.

24  
 25       <sup>2</sup> Plaintiff points out that counsel for Brocade appears to concur with this fact. In a January 14,  
 26       2008 letter to the Court, Brocade's counsel stressed that federal public policy and precedent in the  
 27       Ninth Circuit do not permit indemnification where a defendant has been convicted of violations  
 28       of the federal securities laws.

29       <sup>3</sup> Calculated as follows, and based on the fact that five months have elapsed since the Reyes  
 30       conviction became final in January 2008: \$53,849,576 x 4.7% x 5/12.

1       Here, in contrast, Plaintiff was permitted to file a motion for summary adjudication as to  
 2 Counts XII and XIII for declaratory relief 20 days from the date Plaintiff served Reyes and Jensen  
 3 with the summons and complaint. F.R.C.P. 56(a). Reyes was personally served in this case on  
 4 April 20, 2008 and Jensen was personally served on April 22, 2008.<sup>4</sup> Thus, the Federal Rules of  
 5 Civil Procedure permitted Plaintiff to file a motion for summary judgment or adjudication as to  
 6 Reyes and Jensen on May 12, 2008.

7       Plaintiff requests a hearing date and briefing schedule as soon as possible for a motion for  
 8 summary judgment and/or adjudication as to her declaratory relief claims (Counts XII and XIII)  
 9 against Reyes and Jensen. The necessary evidence already exists to move for summary  
 10 adjudication as to the fact that: (1) Brocade has no further duty to advance fees and expenses to  
 11 Reyes and Jensen; and (2) Reyes and Jensen have an immediate duty to return the advanced fees  
 12 and expenses. Plaintiff will be prepared to address this issue more fully at the CMC.

13       The second motion Plaintiff seeks to file (if necessary) concerns documents improperly  
 14 withheld by Brocade under claim of attorney-client privilege and/or work product. With respect  
 15 to the documents recently produced by Brocade to Plaintiff, tens of thousands of documents have  
 16 been withheld under privilege grounds. The privilege log produced by Brocade is almost six  
 17 inches thick. The privilege log unequivocally states that most of the documents were withheld  
 18 because of alleged attorney client and work product privileges relating to the Audit Committee's  
 19 investigation.<sup>5</sup> Of course, this Court long ago held that the privileges otherwise applicable to  
 20 such documents were waived due to Brocade's voluntary decision to cooperate with the  
 21 government:

22       The Court holds, however, that MoFo and WSG&R surrendered  
 23 whatever privileges may have attached to the subpoea<sup>n</sup> materials when they shared their contents with the government.  
 24 Because the law firms waived both the attorney-client privilege

25 <sup>4</sup> The proofs of service were filed with the Court on June 10, 2008.

26 <sup>5</sup> For example, Brocade has withheld a December 28, 2004 email between defendant Chris  
 27 Paisley and defendants Moore, O'Brien, and attorneys Craig Martin and Paul Friedman of MoFo  
 28 under the attorney client and work product privileges. The privilege log states the reason for  
 withholding the documents as "Attorney client communication re Audit Committee Special  
 investigation." Privilege log at BRCD-FCA 1000440. Brocade has improperly withheld tens of  
 thousands of documents on identical grounds.

1 and the work-product privilege when they disclosed the substance  
 2 of their investigative interviews, reports, and conclusions with the  
 3 government, the Court finds that these privileges pose no obstacle  
 to Reyes' attempt to subpoena them.

4 *United States of America v. Reyes and Jensen*, 239 F.R.D. 591, 603 (N.D. Cal. 2006). Moreover,  
 5 this Court held that the Ninth Circuit does not recognize selective waiver of the privileges: "In  
 6 accord with every appellate court that has considered the issue in the last twenty-five years, this  
 7 Court holds that Brocade's Audit Committee, and their attorneys at MoFo and WSG&R, cannot  
 8 waive the attorney-client privilege selectively." *Id.* at 603. The Court further held that there can  
 9 be no selective waiver of the work product privilege in this case. *Id.* at 603-04.

10 Notwithstanding the prior order from this Court holding that Brocade has waived the  
 11 attorney client and work product privileges, Brocade has withheld tens of thousands of documents  
 12 on privilege grounds. Given the direct applicability of the Court's prior December 22, 2006  
 13 Order, Plaintiff requests that the Court order Brocade to immediately produce the withheld  
 14 documents to Plaintiff. Should Brocade refuse to do so, Plaintiff requests a hearing date and  
 15 briefing schedule for a motion to compel.

16 **VII. DAMAGES**

17 Plaintiff seeks several types of damages from defendants. Plaintiff seeks treble damages  
 18 under RICO against all RICO defendants. The RICO damages are calculated as all damages  
 19 incurred by Brocade as a result of the stock options backdating scheme. Those damages exceed  
 20 \$700 million. The damages are composed of the settlement Brocade recently had to pay to settle  
 21 the securities fraud class action case (\$160 million), the legal fees and expenses advanced to the  
 22 individual defendants (\$64,478,039 as of January 2008), the fine paid by Brocade to the SEC  
 23 (\$7 million), the costs and expenses incurred by Brocade relating to the backdated stock options  
 24 (in excess of \$50 million), legal fees and expenses incurred by Brocade as a result of the internal  
 25 investigations and restatement of financial results, the loss of opportunity relating to the offer by  
 26 Cisco to acquire the company (in excess of \$400 million), damages to Brocade's reputation and  
 27 goodwill, and other damages. Additional damages exist with respect to Plaintiff's professional  
 28 malpractice claims against KPMG and WSGR consisting of the professional fees paid to such

1 advisors.

2 **VIII. AMENDMENT OF PLEADINGS**

3 Plaintiff believes it is premature to set a deadline to amend the pleadings. Despite the fact  
4 that Plaintiff's counsel received certain documents in the state court action, the confidentiality  
5 order in that case precluded counsel from utilizing any such documents in this case. Thus, the  
6 present complaint was filed utilizing exclusively publicly-available documents. Plaintiff thus  
7 would like to incorporate documents produced in this case to draft an amended complaint, if  
8 necessary. Such documents would include the documents that Brocade has improperly withheld  
9 under the attorney-client and work product privileges. Thus, Plaintiff requests that the Court  
10 defer setting a deadline for amending the pleadings until after defendants have produced such  
11 documents.

12 **IX. EVIDENCE PRESERVATION**

13 Plaintiff believes that the individuals who are defendants in the related actions have  
14 previously taken steps to preserve all relevant evidence. However, since there are new defendants  
15 in this case, such defendants should be ordered to immediately preserve all relevant documents.

16 **X. DISCLOSURES**

17 The parties have not yet made the initial disclosures under F.R.C.P. 26(f). Plaintiff  
18 requests that a further CMC be set and that the parties be ordered to comply with their FRCP  
19 26(f) disclosures prior to such further CMC.

20 **XI. SETTLEMENT AND ADR**

21 Plaintiff believes it may make sense to explore settlement under the direction of the Court  
22 or an experienced mediator.

23 **XII. CONSENT TO MAGISTRATE JUDGE**

24 Plaintiff does not consent to assignment of the case to a magistrate.

25 **XIII. OTHER SCHEDULING ISSUES**

26 In light of the significant proceedings which have already occurred in the related cases,  
27 Plaintiff believes that a prompt trial date is warranted. Plaintiff believes that further dates for  
28

1 designation of experts, discovery cutoff, hearing of dispositive motions, and other deadlines  
2 should be set at a further CMC.

3 **XIV. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES**

4 Plaintiff filed her "Certification of Interested Entities or Persons" on April 18, 2008  
5 which stated: "Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other  
6 than the named parties, there is no such interest to report."

7

8

9 Dated: June 11, 2008

JOHNSON BOTTINI, LLP

10

11 /s/ Francis A. Bottini, Jr.

12 Francis A. Bottini, Jr.

13 Attorneys For Plaintiff

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